IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.480 OF 2005

Richard Simon Kiny. ...Petitioner.

Vs.

The Slum Rehabilitation Authority

& Ors. ...Respondents.

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Mr.V.K.Tripathi for the Petitioner.

Mr.G.D.Utangale for Respondent No.1.

Mr.S.G.Surana for Respondent No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 14, 2005.

P.C. :

These proceedings arise out of an order dated 29th January 2005 passed by the Slum Rehabilitation Authority holding that the Petitioner is not eligible to participate in a Slum Rehabilitation Scheme under Development Control Regulation 33(10). According to the Petitioner, for over 50 years, his mother Flory Simon Kinny was

a monthly tenant of Shop No.1 situated at Bhagoji Keer Marg, Rambaug, Merzban Estate, Behind Paradise Cinema, Final Plot No.487, TPS III, Mahim, Mumbai-400 016. According to the Petitioner, his mother carried on a small Pan Bidi business in the premises of the shop. A Shops and Establishment Certificate was issued in 1984 by the Municipal Corporation. The Petitioner has stated that even after the death of his mother on 5th June 2000, he has carried on the business which was hitherto pursued by her. The case of the Petitioner is that in February 2004, he obtained knowledge of the fact that the Fifth Respondent had obtained a Shops and Establishment Certificate from the Municipal Corporation at the address of the Petitioner. The Petitioner thereupon addressed a representation dated 1st March 2004 to the Superintendent and Senior Inspector of the Licensing Department of the Municipal Corporation in the G-North Ward Office. It is stated that an enquiry was made at site and the officials of the Municipal Corporation found that it was the Petitioner who was in actual physical possession. Consequently, it is stated that the Shops and Establishment Certificate which was granted to the Fifth Respondent was cancelled. The property is in the occupation of slum dwellers and was declared as a slum area on 15th February

1999. A Co-operative Housing Society has been formed by the Slum Dwellers for carrying out redevelopment. The Fourth Respondent is the Co-operative Society and the Second Respondent is the developer who has to carry out the work of development. In June 2004, the Petitioner found that his name was not included in Annexure-II which contained the names of eligible slum dwellers. The allegation of the Petitioner in the petition is that the Fifth Respondent together with certain unlawful elements made an attempt to dispossess him and he was called at the Mahim Police Station where he was pressurised to hand over possession of the premises to the Fifth Respondent. The Petitioner filed an appeal on 14th June 2004. According to the Petitioner, the office bearers of the Fourth Respondent and the Fifth Respondent are in collusion and are attempting to deprive him of his lawful entitlement. The impugned order was passed on 29th January 2005 by the Slum Rehabilitation Authority holding that the Petitioner is not eligible to participate in the Slum Rehabilitation Scheme.

Ex-facie, the order of the Slum Rehabilitation Authority does not reflect a proper application of mind or, for that matter, concrete

reasons in regard to the claim of the Petitioner. Hence, it would be appropriate to direct the Slum Rehabilitation Authority to consider the case of the Petitioner afresh and to pass a fresh order on the application/appeal of the Petitioner for the recognition of his eligibility. In order to facilitate a fresh determination by the Slum Rehabilitation Authority, the impugned order dated 29th January 2005 is quashed and set aside without the expression of any opinion on the merits of the case. The Petitioner and the Fifth Respondent are both directed to appear before the Slum Rehabilitation Authority on 28th March 2005 with documentary material on the basis of which their respective claims can be adjudicated upon by the Slum Rehabilitation Authority. The SRA shall pass final orders after hearing the Petitioner, the Fifth Respondent and any other party which may be concerned, by 15th May 2005. The Petition is accordingly disposed of.

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